



General Assembly

February Session, 2002

**Amendment**

LCO No. 4882

\*SB0036004882HR0\*

Offered by:

REP. CLEARY, 80<sup>th</sup> Dist.

REP. EBERLE, 15<sup>th</sup> Dist.

To: Subst. Senate Bill No. 360

File No. 152

Cal. No. 399

**"AN ACT CONCERNING NOTICE AND PUBLIC HEARING PRIOR  
TO A NURSING HOME CLOSURE."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 17b-352 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2002*):

5 (a) For the purposes of this section and section 17b-353, "facility"  
6 means a residential facility for the mentally retarded licensed pursuant  
7 to section 17a-277, as amended, and certified to participate in the Title  
8 XIX Medicaid program as an intermediate care facility for the mentally  
9 retarded, a nursing home, rest home or residential care home, as  
10 defined in section 19a-490, as amended.

11 (b) Any facility which intends to (1) transfer all or part of its  
12 ownership or control prior to being initially licensed; (2) introduce any  
13 additional function or service into its program of care or expand an

14 existing function or service; or (3) terminate a service or decrease  
15 substantially its total bed capacity, shall submit a complete request for  
16 permission to implement such transfer, addition, expansion, increase,  
17 termination or decrease with such information as the department  
18 requires to the Department of Social Services. The office of the Long-  
19 Term Care Ombudsman pursuant to section 17b-400 shall be notified  
20 by the facility of any proposed actions pursuant to this subsection at  
21 the same time as the request for permission is submitted to the  
22 department.

23 (c) An applicant, prior to submitting a certificate of need  
24 application, shall request, in writing, application forms and  
25 instructions from the department. The request shall include: (1) The  
26 name of the applicant or applicants; (2) a statement indicating whether  
27 the application is for (A) a new, additional, expanded or replacement  
28 facility, service or function, (B) a termination or reduction in a  
29 presently authorized service or bed capacity or (C) any new, additional  
30 or terminated beds and their type; (3) the estimated capital cost; (4) the  
31 town where the project is or will be located; and (5) a brief description  
32 of the proposed project. Such request shall be deemed a letter of intent.  
33 No certificate of need application shall be considered submitted to the  
34 department unless a current letter of intent, specific to the proposal  
35 and in accordance with the provisions of this subsection, has been on  
36 file with the department for not less than ten business days. For  
37 purposes of this subsection, "a current letter of intent" means a letter of  
38 intent on file with the department for not more than one hundred  
39 eighty days. A certificate of need application shall be deemed  
40 withdrawn by the department, if a department completeness letter is  
41 not responded to within one hundred eighty days. The office of the  
42 Long-Term Care Ombudsman shall be notified by the facility at the  
43 same time as the letter of intent is submitted to the department.

44 (d) Any facility acting pursuant to subdivision (3) of subsection (b)  
45 of this section shall provide written notice, at the same time it submits  
46 its letter of intent, to all patients, guardians or conservators, if any, or  
47 legally liable relatives or other responsible parties, if known, and shall

48 post such notice in a conspicuous location at the facility. The notice  
49 shall state the following: (A) The projected date the facility will be  
50 submitting its certificate of need application, (B) that only the  
51 department has the authority to either grant, modify or deny the  
52 application, (C) that the department has up to ninety days to grant,  
53 modify or deny the certificate of need application, (D) a brief  
54 description of the reason or reasons for submitting a request for  
55 permission, (E) that no patient shall be involuntarily transferred or  
56 discharged within or from a facility pursuant to state and federal law  
57 because of the filing of the certificate of need application, (F) that all  
58 patients have a right to appeal any proposed transfer or discharge, and  
59 (G) the name, mailing address and telephone number of the office of  
60 the Long-Term Care Ombudsman and local legal aid office.

61 [(d)] (e) The department shall review a request made pursuant to  
62 subsection (b) of this section to the extent it deems necessary,  
63 including, but not limited to, in the case of a proposed transfer of  
64 ownership or control prior to initial licensure, the financial  
65 responsibility and business interests of the transferee and the ability of  
66 the facility to continue to provide needed services, or in the case of the  
67 addition or expansion of a function or service, ascertaining the  
68 availability of the function or service at other facilities within the area  
69 to be served, the need for the service or function within the area and  
70 any other factors the department deems relevant to a determination of  
71 whether the facility is justified in adding or expanding the function or  
72 service. The commissioner shall grant, modify or deny the request  
73 within ninety days of receipt thereof, except as otherwise provided in  
74 this section. Upon the request of the applicant, the review period may  
75 be extended for an additional fifteen days if the department has  
76 requested additional information subsequent to the commencement of  
77 the commissioner's review period. The director of the office of  
78 certificate of need and rate setting may extend the review period for a  
79 maximum of thirty days if the applicant has not filed in a timely  
80 manner information deemed necessary by the department. The  
81 applicant may request and shall receive a hearing in accordance with

82 section 4-177 if aggrieved by a decision of the commissioner.

83 [(e)] (f) The Commissioner of Social Services shall not approve any  
84 requests for beds in residential facilities for the mentally retarded  
85 which are licensed pursuant to section 17a-227, as amended, and are  
86 certified to participate in the Title XIX Medicaid Program as  
87 intermediate care facilities for the mentally retarded, except those beds  
88 necessary to implement the residential placement goals of the  
89 Department of Mental Retardation which are within available  
90 appropriations.

91 [(f)] (g) The Commissioner of Social Services shall adopt regulations,  
92 in accordance with chapter 54, to implement the provisions of this  
93 section. The commissioner shall implement the standards and  
94 procedures of the Office of Health Care Access concerning certificates  
95 of need established pursuant to section 19a-643, as appropriate for the  
96 purposes of this section, until the time final regulations are adopted in  
97 accordance with said chapter 54.

98 Sec. 2. Subsection (a) of section 17b-354 of the general statutes, as  
99 amended by section 53 of public act 01-2 of the June special session  
100 and section 129 of public act 01-9 of the June special session, is  
101 repealed and the following is substituted in lieu thereof (*Effective*  
102 *October 1, 2002*):

103 (a) Except for applications deemed complete as of August 9, 1991,  
104 the Department of Social Services shall not accept or approve any  
105 requests for additional nursing home beds or modify the capital cost of  
106 any prior approval for the period from September 4, 1991, through  
107 June 30, 2007, except (1) beds restricted to use by patients with  
108 acquired immune deficiency syndrome or traumatic brain injury; (2)  
109 beds associated with a continuing care facility which guarantees life  
110 care for its residents; [and] (3) Medicaid certified beds to be relocated  
111 from one licensed nursing facility to another licensed nursing facility,  
112 provided (A) the availability of beds in an area of need will not be  
113 adversely affected; (B) no such relocation shall result in an increase in

114 state expenditures; and (C) the relocation results in a reduction in the  
115 number of nursing facility beds in the state; and (4) a request for no  
116 more than twenty beds submitted by a licensed nursing facility that  
117 participates in neither the Medicaid program nor the Medicare  
118 program, admits residents and provides health care to said residents  
119 without regard to their income or assets and demonstrates its financial  
120 ability to provide lifetime nursing home services to such residents  
121 without participating in the Medicaid program to the satisfaction of  
122 the department, provided the department does not accept or approve  
123 more than one request pursuant to this subdivision. Notwithstanding  
124 the provisions of this subsection, any provision of the general statutes  
125 or any decision of the Office of Health Care Access, (i) the date by  
126 which construction shall begin for each nursing home certificate of  
127 need in effect August 1, 1991, shall be December 31, 1992, (ii) the date  
128 by which a nursing home shall be licensed under each such certificate  
129 of need shall be October 1, 1995, and (iii) the imposition of such dates  
130 shall not require action by the Commissioner of Social Services. Except  
131 as provided in subsection (c) of this section, a nursing home certificate  
132 of need in effect August 1, 1991, shall expire if construction has not  
133 begun or licensure has not been obtained in compliance with the dates  
134 set forth in subparagraphs (i) and (ii) of this subsection.

135 Sec. 3. Subsection (c) of section 17b-353 of the general statutes is  
136 repealed and the following is substituted in lieu thereof (*Effective*  
137 *October 1, 2002*):

138 (c) [The commissioner or his designee shall hold a hearing, pursuant  
139 to section 4-177,] In conducting its activities pursuant to this section,  
140 section 17b-352 or both, the commissioner or said commissioner's  
141 designee may hold a public hearing on an application or on more than  
142 one application, if such applications are of a similar nature with  
143 respect to the request. At least two weeks' notice of the hearing shall be  
144 given to the facility by certified mail and to the public by publication in  
145 a newspaper having a substantial circulation in the area served by the  
146 facility. Such hearing shall be held at the discretion of the  
147 commissioner in Hartford or in the area so served. The commissioner

148 or [his] said commissioner's designee shall consider such request in  
 149 relation to the community or regional need for such capital program or  
 150 purchase of land, the possible effect on the operating costs of the  
 151 facility and such other relevant factors as the commissioner or [his]  
 152 said commissioner's designee deems necessary. In approving or  
 153 modifying such request, the commissioner or [his] said commissioner's  
 154 designee may not prescribe any condition, such as, but not limited to,  
 155 any condition or limitation on the indebtedness of the facility in  
 156 connection with a bond issued, the principal amount of any bond  
 157 issued or any other details or particulars related to the financing of  
 158 such capital expenditure, not directly related to the scope of such  
 159 capital program and within the control of the facility. [Upon a showing  
 160 by such facility that the need for such capital program is of an  
 161 emergency nature, the commissioner may waive the requirement that  
 162 a hearing be held thereon, provided such request shall be submitted at  
 163 least ten business days before the proposed initiation date of the  
 164 project.] If the hearing is conducted by a designee of the commissioner,  
 165 the designee shall submit [his] any findings and recommendations to  
 166 the commissioner. The commissioner shall grant, modify or deny such  
 167 request within ninety days, [or within ten business days, as the case  
 168 may be, of receipt thereof,] except as provided for in this section. Upon  
 169 the request of the applicant, the review period may be extended for an  
 170 additional fifteen days if the commissioner or [his] said commissioner's  
 171 designee has requested additional information subsequent to the  
 172 commencement of the review period. The commissioner or [his] said  
 173 commissioner's designee may extend the review period for a  
 174 maximum of thirty days if the applicant has not filed in a timely  
 175 manner information deemed necessary by the commissioner or [his]  
 176 said commissioner's designee."

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>